UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,283	11/05/2001	Douglas F. Connor	020431.1055	7058

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EXAMINER
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ART UNIT	PAPER NUMBER
3623	

DATE MAILED: 08/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/992,283	CONNOR ET AL.
	Examiner	Art Unit
	Linda Krisciunas	3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

 A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
 Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 August 2006*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-35* is/are pending in the application.

  4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5, 8-16, 19-27 and 30-35* is/are rejected.

7)☒ Claim(s) *6-7, 17-18 and 28-29* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

  a)☐ All b)☐ Some * c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

  * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
  Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
  Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

1.   The following is a Final office action in response to the applicant's arguments

filed August 4, 2006. Claims 1-35 are pending.

Response to Arguments

2.   The examiner has fully considered the applicant's arguments and they are

deemed not persuasive.

In response to applicant's argument that Schwartz does not teach risk

assessment "regarding a software implementation project", a recitation of the intended

use of the claimed invention must result in a structural difference between the claimed

invention and the prior art in order to patentably distinguish the claimed invention from

the prior art. If the prior art structure is capable of performing the intended use, then it

meets the claim. The Examiner asserts that the indicated claim language is merely

intended use and does not impact the functionality of the claims. In response to

applicant's argument concerning applicant's utilization of prior art reference(s) for a

different purpose, the fact that the applicant uses invention for a different purpose does

not alter the conclusion that its use in a prior art device would be prima facie obvious

from the purpose disclosed in the reference.

With respect to the argument that Schwartz does not teach an importance value

and maximum score for each risk factor, the Examiner disagrees and asserts that in

paragraphs 13-14 and 53 Schwartz teaches using weights for each risk factor, whereby

the weight would constitute an importance value. In addition, the Examiner asserts that

paragraph 96 teaches the risk score is compared to a maximum acceptable value,

whereby the score cannot exceed the acceptable value and therefore the score would be the maximum allowed score.

With respect to the argument that Schwartz does not teach receiving an actual score, the Examiner disagrees and asserts that Figure 4b, item (416) where the score is stored in the database. Therefore one would need to receive a score in order to store it in a database.

With respect to the argument that Schwartz does not teach an actual weighted score, the Examiner disagrees and asserts that paragraphs 9 and 53 teach weighting and paragraph 53 teaches a composite risk score which includes the weighted components.

With respect to the argument that Schwartz does not teach assigning a risk level, the Examiner disagrees and asserts that paragraph 28 teaches risk level and monitoring of risk level changes, whereby a risk level would require assigning prior to monitoring.

With respect to the argument that Schwartz does not teach generating a risk assessment comprising one or more of the assigned risk levels for one or more corresponding risk factors, the Examiner disagrees and asserts that paragraph 53 teaches a composite risk score as part of the risk assessment, whereby weighted variables or factors are utilized which would encompass risk level as previously explained (paragraph 28).

With respect to the at that Schwartz in view of Bowman does not teach a scorecard, the Examiner disagrees and asserts paragraph 401: "the PAF scorecard tab shown in Figure 64 applies to different customizable spreadsheets associated with the

project/initiative.", whereby the fact that the scorecard can be seen by the user constitutes displaying it.

With respect to the argument that there is no motivation to combine Schwartz and Bowman, the Examiner disagrees and asserts that they are both in the same field of endeavor: the management of risk, whereby the motivation to combine features of analogous art would be obvious to one of ordinary skill in the art. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In addition, 'the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art." In re Keller, Terry, and Davies, 208 USPQ 871, 881 (CCPA 1981).

The result of combining the two references to create the scorecard feature provides a more user-friendly means of displaying the data, whereby it is easier to view a summary of the key information in one format to facilitate decision making.

In response to applicant's argument concerning impermissible hindsight for the

motivation to combine Schwartz and Bowman, the Examiner asserts that "any judgment

on obviousness is in a sense necessarily a reconstruction based upon hindsight

reasoning, but so long as it takes into account only knowledge which was within the

level of ordinary skill at the time claimed invention was made and does not include

knowledge gleaned only from applicant's disclosure, reconstruction is proper." In re

McLaughlin, 170 USPQ 209, 212 (CCPA 1971).

With respect to the traversal of the Official Notice taken, the Examiner asserts

that this is now admitted prior art as the challenge is untimely and the Examiner duly

notified the applicant of such in the Office Action filed May 5, 2006.

> To adequately traverse such a finding, an applicant must
> specifically point out the supposed errors in the examiner's action, which
> would include stating why the noticed fact is not considered to be
> common knowledge or well-known in the art. See 37 CFR 1.111(b). See
> also *Chevenard, 139 F.2d at 713, 60 USPQ at 241* ("[I]n the absence of
> any demand by appellant for the examiner to produce authority for his
> statement, we will not consider this contention."). A general allegation
> that the claims define a patentable invention without any reference to the
> examiner's assertion of official notice would be inadequate. If applicant
> adequately traverses the examiner's assertion of official notice, the
> examiner must provide documentary evidence in the next Office action if
> the rejection is to be maintained. See 37 CFR 1.104(c)(2). See also
> *Zurko, 258 F.3d at 1386, 59 USPQ2d at 1697* ("[T]he Board [or
> examiner] must point to some concrete evidence in the record in support
> of these findings" to satisfy the substantial evidence test). If the examiner
> is relying on personal knowledge to support the finding of what is known
> in the art, the examiner must provide an affidavit or declaration setting
> forth specific factual statements and explanation to support the finding.
> See 37 CFR 1.104(d)(2). If applicant does not traverse the examiner's
> assertion of official notice or applicant's traverse is not adequate, the
> examiner should clearly indicate in the next Office action that the
> common knowledge or well-known in the art statement is taken to be
> admitted prior art because applicant either failed to traverse the
> examiner's assertion of official notice or that the traverse was
> inadequate. If the traverse was inadequate, the examiner should include
> an explanation as to why it was inadequate. (MPEP § 2144.03(C))

Applicant has not "specifically point[ed] out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art." Applicant's broad request for references to support Examiner's statements of Official Notice amounts to nothing more than an unsupported challenge. Despite this fact, the Examiner will further address the Official Notice.

With regard to the Official Notice for claims 5, 16 and 27, the Examiner asserts that mathematical manipulation or the mere adding, subtracting, dividing, calculating percentages and ratios etc are well known in the art. Barton et al (US 2002/0059093) teaches in Figure 7 tallying the subcomponent values for infrastructure and taking the actual score (136) and dividing it by the possible score (134) and multiplying by 100 to get % met (132).

With regard to the Official Notice taken for claims 10, 21 and 32, the Examiner asserts that it is old and well known to take the % met value as previously indicated by Barton et al (US 2002/0059093) and subtract this from 1 to provide the value of unmet goals, which constitutes the risk level or the value associated with not being able to meet all the goals.

With regard to Official Notice for claims 8, 19 and 30, the Examiner asserts that it is old and well known that a company that sells a product or service would also offer to install the product at the site of the client/customer. For example, if a customer purchases a sink or toilet from a plumbing store, it is common that the company also has someone implement or install the product purchased.

Claim Rejections - 35 USC § 102

3.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4.   Claims 1, 4, 9, 11-12, 15, 20, 22-23, 26, 31, 33 and 33-35 are rejected under 35

U.S.C. 102(e) as being anticipated by Schwartz (US 2003/0037063).

As per claims 1, 12, 23, and 34-35, Schwartz teaches a system for generating

risk assessment regarding software implementation projects comprising (paragraph 24:

"the invention is directed to a network based method and system for risk assessment,

risk monitoring and caseload management" whereby the exact field that the invention is

used for is not a limitation as risk assessment is applicable across a range of fields.

Therefore, the phrase "software implementation project" is intended use and does not

affect the functionality of the claimed invention.): access a specified importance value

and maximum score for each risk factor (paragraph 53 teaches weighting which

constitutes an importance value and paragraph 96: "Decision block 417 represents a

process where an initially assessed risk score is compared to a maximum acceptable

value. If the assessed risk score does not exceed the acceptable value, no

unacceptable risk is present and the system returns to standby mode (process 404). If

the initial score is indicative of unacceptable risk (high risk), process 428 is performed to

determine and store an initial "goal." The initial goal may be determined by a worker or

generated automatically by system software 324."), the importance of each risk factor

reflecting experience of an implementing entity regarding the extent to which the risk

factor may negatively impact a software implementation project if the risk factor is not

adequately addressed (paragraph 53: "based on weighting variables defined by experts

in the field." Whereby the expert would understand the importance and would reflect the

experience of the potential negative impact if the factor was not considered), the

importance value and maximum score for each factor is multiplied to define a potential

weighted score for each factor (paragraph 74: where an initial risk assessment score is

calculated which subsequently is re-calculated as continuous-like updating of risk

assessment takes place. This is interpreted to be equivalent to a potential weighted

score as it performs an identical function in substantially the same manner with

substantially the same results since both are scores that are updated and changed and

are not the actual or final score.); receive an actual score for each factor based on an

analysis by the implementing entity specific to the particular software project (paragraph

97: "Logs may include risk scores associated with the clients, flags indicating high risk,

goals, and other data such as detailed information about the primary client and

associated secondary clients." Whereby an actual score is calculated for each factor.

See also Figure 4b (416) where the score is stored in the database.); generate an

actual weighted score for each risk factor by multiplying the importance value and the

actual score for the risk factor (paragraph 26: "Another aspect of the present invention is

to provide a method of risk assessment where relative weights of risk assessment

variables are determined and refined to produce accurate assessments."); determine a

relationship between the potential weighted score and the actual weighted score for

each factor (paragraph 93: "Process 401 represents a step that may be included to

initiate a risk assessment application when using ANN or AFLRA based applications.

Input-output data sets of known risk assessment input and expected output are first

obtained. This "historical" data is then stored in database 304 during process 402. The

historical data set is used to train the ANN or AFLRA software in process 403 using

error backpropagation or other training algorithms known to those skilled in the art. Of

course, it is to be understood that steps 401-403 are not always necessary if a fuzzy

logic expert system is used alone as the risk assessment application in the present

invention." Whereby the algorithm relates between the historical or potential data and

the actual data); assign a risk level for the particular project to each risk factor according

to the relationship between the potential weighted score and the actual weighted score

for the risk factor, the risk level for each factor representing an assessment by the

implementing entity regarding the extent to which the factor is not adequately addressed

(paragraph 101: "When a dangerously high-risk level is assessed for a primary client,

system 300 may suggest other means of notification" whereby a flag may be generated

as noted in paragraph 90 to indicate the level was exceeded. See also paragraph 28

which discloses risk level and risk level monitoring); and generate a risk assessment for

the project comprising one or more of the assigned risk levels for the project for one or

more corresponding risk factors (paragraph 101: "When a high-risk assessment is

generated by system 300" whereby an assessment is conducted with respect to a risk

level. See also paragraph 53 where a composite risk score is calculated which encompasses various risk variables or factors.).

As per claims 4, 15 and 26, Schwartz teaches the risk factor is associated with one of a plurality of risk factor categories, each risk factor category comprising one or more risk factors (paragraph 46: "include several risk categories for which the present invention can be used." And paragraph 59: "input variables representing risk factors").

As per claims 9, 20 and 31, Schwartz teaches the actual score for a risk factor is determined by the implementing entity and is based on an evaluation of client resources and capabilities relevant to the risk factor (paragraph 53: "Risk assessment is a complex process where decisions leading to a risk assessment score are made based on weighting variables defined by experts in the field. A composite risk score is reached by combining weighted contributions of these variables. Whether a variable is particularly relevant, or should be minimized, is usually left to the judgement of an expert in the particular field of risk being assessed. Additionally, variables under consideration when assessing risk, by their nature, are often imprecise or uncertain in the classical first order logic and classical probability theory sense. Because the number of relevant variables and determination of particular weights assigned to them present a formidable task for a system designer, known systems often produce scores that fail to adequately represent risk." Whereby the implementing entity (or seller) would be an expert and able to assign weights to lead to the calculation of the actual risk score.).

As per claims 11, 22 and 33, Schwartz teaches the maximum score is a

maximum attainable score (The maximum score is inherently the maximum attainable

score. A maximum score is taught in Figure 5a and 5b where they list maximum scores

of "always" and 1000 respectively. In addition, paragraphs 96 and 103 teach about the

maximum score prior to the alert. Therefore there is a maximum score that can be

attained prior to the sending of an alert. This is equivalent to maximum attainable score

as it performs an identical function in substantially the same manner with substantially

the same results.).

Claim Rejections - 35 USC § 103

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

6.   Claims 2, 13 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Schwartz (US 2003/0037063) in view of Bowman et al (US 2003/0061246).

As per claims 2, 13 and 24, Schwartz does not explicitly teach a scorecard.

Bowman teaches that it is known the components generate a risk assessment

scorecard for display which provides risk factors and the importance value, maximum

score, potential weighted score, actual score, actual weighted score and risk level for

each factor in a spreadsheet format (The listing of actual score and weighted score etc

are viewed as different representations of the same data and are deemed a design

choice with respect to which formats are selected for display. Bowman teaches

formatting a spreadsheet-based scorecard in paragraphs 400-459. The scorecard is in

spreadsheet format (paragraph 401), the cells can be linked to data (paragraph 407)

and the risk values are linked by selecting a risk category and then choosing a

particular risk from the category (paragraph 421). There are indicators and risk values

used with the scoreboard (paragraph 447) as well as weighted average values and

percentages (paragraph 453)). Bowman is an analogous art as it also teaches about

risk assessment and management. Therefore it would have been obvious to one of

ordinary skill in the art at the time of the invention to modify the risk assessment

system of Schwartz with the scorecard feature of Bowman to provide a more user-

friendly means of displaying the data.

7.   Claims 3, 5, 8, 10, 14, 16, 19, 21, 25, 27, 30 and 32 are rejected under 35 U.S.C.

103(a) as being unpatentable over Schwartz (US 2003/0037063).

        As per claims 3, 14 and 25, Schwartz teaches the maximum score is the same

for each risk factor; and the importance value and maximum score for a risk factor

remain constant across multiple projects. Official notice is taken that it is old and well

known in the arts to have a range of values for rating risk factors, as noted in "The

balanced scorecard: a foundation for the strategic management of information systems"

by Martinsons et al. Decision Support Systems, 1999, pages 71-88. See page 78,

second column, last paragraph, where the risk categories have a value rating from 0 to

5. The weighting is subjective to the user and the project, so if the importance or

weighting remains constant for each project that is deemed a design choice. The user

has selected one risk factor as having consistent importance and risk for every project.

As per claims 5, 16 and 27, Schwartz teaches the components are collectively

operable to generate a risk assessment for each risk factor category according to a

category percentage risk for each risk factor category, the category percentage risk

being determined by (paragraph 46): determining a quotient of a category actual score

and a category maximum score (paragraph 50: "Variable values are then processed by

a computer risk assessment application in the system to determine a composite risk

score that indicates a level of risk present at the time the values were determined."), the

category actual score reflecting the sum of the actual scores of all risk factors within a

risk factor category, the category maximum score reflecting the sum of the maximum

scores of all risk factors within a risk factor category; determining the quotient by

dividing the category actual score by the category maximum score; and determining the

category percentage risk by multiplying the quotient by one hundred. Official notice is

taken that both the concept and advantage of mathematical manipulation are well

known and expected in the art. Whereby mathematical manipulation includes basic

math functions such as adding, subtracting, dividing, multiplication, and calculating

percentages. Therefore, it would have been obvious to one of ordinary skill in the art at

the time of the invention to manipulate the data by adding, dividing and multiplying

combinations of data to facilitate the analysis of the information.

As per claims 8, 19 and 30, Schwartz teaches the implementing entity is a seller

of software to be implemented in the particular software implementation project at one

or more sites of a client (paragraph 75: "Preferably, the risk assessment application is accessible by, or part of an overall system application that performs risk assessment, monitors risk, and assists workers in the field in managing primary client risk, thus forming a risk assessment, risk monitor, and case management system. This system application may be implemented by software on a computer. The risk assessment application of the present invention may be implemented with a software application or hardware that resides in the computer. Other data processing, data storage, and data retrieval of the system may be performed using the system software stored in the computer. The computer may be a server connected to a network with other devices capable running an Internet browser or other software that can be used to send, receive and display Web page information. These devices may include personal computers, portable computer devices, such as handheld or laptop computers, electronic paper, video monitors, audio systems, and wireless devices, such as wireless phones and PDA (Personal Data Assistant) devices. Other devices known to those skilled in the art are intended to be in the scope of the present invention." Official notice is taken that both the concept and advantage of having the seller implement or install the software is well known and expected in the art. The software that is on the system would need to be installed by a person initially and it is known and common that the company that makes the software would send a sales representative to the site to install the software and set up the licenses on multiple site locations. Therefore is would have been obvious to one of ordinary skill in the art at the time of the invention to have used the seller to install the software to provide a more efficient means for initial set up of the system).

As per claims 10, 21 and 32, Schwartz teaches the relationship between the potential weighted score and the actual weighted score for each risk factor (paragraph 93: "Process 401 represents a step that may be included to initiate a risk assessment application when using ANN or AFLRA based applications. Input-output data sets of known risk assessment input and expected output are first obtained. This "historical" data is then stored in database 304 during process 402. The historical data set is used to train the ANN or AFLRA software in process 403 using error backpropagation or other training algorithms known to those skilled in the art. Of course, it is to be understood that steps 401-403 are not always necessary if a fuzzy logic expert system is used alone as the risk assessment application in the present invention." Whereby the algorithm relates between the historical or potential data and the actual data), determining assignment of the risk level for the risk factor (paragraph 101: "When a dangerously high-risk level is assessed for a primary client, system 300 may suggest other means of notification" whereby a flag may be generated as noted in paragraph 90 to indicate the level was exceeded.), is a percentage based on one minus the quotient of the actual weighted score and the potential weighted score for each risk factor. Official notice is taken that both the concept and advantage of calculating a risk factor utilizing the formula mentioned (risk level is a percentage based on one minus the quotient of the actual weighted score and the potential weighted score) is well known and expected in the art. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to calculate a risk factor this way to provide a means for weighting the risk and thus providing a more accurate score.

Allowable Subject Matter

8.   Claims 6-7, 17-18 and 28-29 are objected to as being dependent upon a rejected

base claim, but would be allowable if rewritten in independent form including all of the

limitations of the base claim and any intervening claims.

Conclusion

9.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure. The following art also teaches about risk management: "Project

Risk Assessment using the Analytic Hierarchy Process" by Mustafa et al, IEEE, 1991;

"Risk factors in enterprise wide information management systems projects" by Sumner,

Proceedings of the 2000 ACM SIGCPR Conference on Computer Personnel research,

2000 and "Risk Management in Information Systems: Problems and Potential" by Smith

et al, Communications of the Association for Information Systems, August 2001.

        Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Linda Krisciunas whose telephone number is 571-272-

6931. The examiner can normally be reached on Monday through Friday, 6:30 am to

3:00 pm.

        If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Tariq Hafiz can be reached on 571-272-6729. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LMK